

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1761 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHESHBHAI L PATEL

Versus

STATE OF GUJARAT

Appearance:

MR JITENDRA M PATEL for Petitioner

MR. A.G. URAIZEE, ASST. GOVERNMENT PLEADER for
the respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/10/96

ORAL JUDGEMENT

The petitioner, by this petition, challenges the order dated 1.1.1986 passed by the Gujarat Revenue Tribunal, in Revision Applications Nos. Ten B.A. 754 of 1983, partly confirming the order of the Collector directing the petitioner to pay the premium amount on the land sold.

2. Briefly stated the facts of the case are that there was an agricultural land bearing survey No. 57 situated within the sim of village Manjalpur of Baroda District. Vikrambhai Lalsinh was the owner of that land and Kuberbhai, Vithalbhai and Raijibhai, the brothers, were the tenants of that agricultural land. Before the Bombay Tenancy Act came into force, on 30.3.1957, obtaining necessary permission, Kuberbhai, Vithalbhai and Raijibhai purchased the land from the landlord. It was the old tenure land. Soon after the sale was effected, all the three brothers became the joint owners of the land. Thereafter, family partition took place and the land bearing survey No. 57 came to be divided into three equal parts. The new survey numbers were given to all the three parts as S. No. 57/1, 57/2 and 57/3. Thereafter, the lands S. No. 57 paiky (final plot No. 371) was sold to the Dahibanagar Co-operative Housing Society for the purpose of constructing residential houses, taking of course necessary N.A. permission. On 6.2.1976, the permission to sell the land to the Co-operative Society was granted. The Co-operative Society was then put into the possession and obtaining the necessary permission dwelling units were also constructed. On 8.9.1982 about six years after the permission was granted, the Collector issued a notice calling upon the petitioner to pay up the amount of premium equivalent to 50 per cent of the market value of the land. According to him, when the permission to sell the land to Co-operative Society was given, by mistake the amount of premium was not collected, which otherwise the petitioner was liable to pay under Section 43 of the Bombay Tenancy Act. He pointed out that the land was not the old tenure land, but the new tenure land, and therefore it was imperative upon the petitioner to pay the premium amount. After being served with the notice, the petitioner appeared before the Collector on 6.12.1982 and filed his reply-cum-objection. Hearing the petitioner, the Collector on 20.3.1983 ordered the petitioner to pay up the amount of premium which he fixed at Rs. 2,66,312.50ps. Being aggrieved by the order of the Collector, the petitioner preferred the Revision Application being Ten B.A. No. 754 of 1983 before the Gujarat Revenue Tribunal challenging the order of the Collector. On 1.1.1986 hearing the parties, the Tribunal reached the conclusion that it was not the new tenure land but old tenure land, and Section 43 of the Bombay Tenancy Act was not at all applicable. However, the Tribunal has observed that the Collector ordered to pay up the amount, bearing in mind certain standing orders of the State Government. The State being sovereign and the owner of the lands, it was left to it to determine such

amount as deemed fit in its absolute discretion. The Collector had not fixed the amount under Section 43 of the Bombay Tenancy Act as nothing clear thereof on record was found. When that was so the Tribunal had no authority or jurisdiction to enter into the merits of that order and disturb the same. The Tribunal consequently partly allowed the Revision holding that the Collector was not right in treating the land as new tenure land and claiming the amount under Section 43 of the Bombay Tenancy Act, but upheld the order partly holding that it was open to the State Government, being sovereign authority, to recover such amount. The petitioner has therefore preferred this application challenging the validity and legality of the order passed by the Tribunal.

3. It has been contended on behalf of the petitioner that the Tribunal had on flimsy reasons confirmed the order of the Collector whereby the petitioner has been directed to make the payments. Whenever the State has to exercise the power and to direct the citizen to do or not to do a particular act, it is incumbent upon the State to point out a specific provision in the Act vesting with the power thereof, otherwise levy of the sum would amount to fleecing of the subject. In this case when there was no provision at all in law to direct the petitioner to pay up the premium and on unsubstantial reasons when the order has been confirmed, interference of this court is a must.

4. The contentions advanced on behalf of the petitioner are weighty and cannot be swept under the carpet. It is not disputed before me that formerly the land belonged to Vikrambhai Lalsinh and the three brothers, namely, Kuberbhai, Vithalbhai and Raijibhai were the tenants. There is also no dispute about the fact that on 30.3.1957 Vikrambhai Lalsinh sold out the agricultural land to Kuberbhai, Vithalbhai and Raijibhai. At that time the land was old tenure land. It may be remembered that the land is not sold because of the operation of Section 32G of the Bombay Tenancy Act. After the land was purchased there was a partition of the joint properties amongst three brothers, and later on taking necessary N.A. permission dated 6.2.1976 the land bearing S. No. 57/1 was sold to the Kubernagar Co-operative Housing Society on 11.2.1976. At that time also the land continued to be the old tenure land. About 6 years thereafter i.e. on 8.9.1982 the Collector issued notice calling upon the petitioner to pay up the amount of the premium which was according to him 50 per cent of the market value. According to him, under Section 43 of

the Bombay Tenancy Act the premium was required to be levied at the time of granting the permission which was, in fact, by mistake not recovered. That action of the Collector was challenged. The Tribunal in Revision held as aforesaid. Whether the orders of the Collector and the Tribunal are valid and legal is the only point that falls for determination.

5. At page 23 of the record the permission granted under Section 63 of the Bombay Tenancy Act is produced wherein it is clearly mentioned that there was no reason to levy the premium amount as the land was the old tenure land. It was however made clear that the petitioner would obtain necessary permission under Section 65 of the Bombay Land Revenue Code. The same was sought on 10.6.1976, a copy of which has been shown to me today which is also perused by the learned A.G.P. It may be stated that all other conditions are also fulfilled. However the notice has been issued 6 years after the grant of the permission. Reading the notice produced at page 26 Annexure-C no doubt is left about the fact that the Collector called upon the petitioner to pay up the amount under Section 43 of the Bombay Tenancy Act. No doubt, as per Section 43 as it stands today, no land or interest therein purchased by a tenant either under section 32, 32F, 32P or 64 and other sections mentioned can be transferred by sale, gift, lease, exchange etc. without the previous sanction of the Collector and payment of such amount as the State Government may by general or special order determine; but it is pertinent to note that Section 43 as it stands today came into being after amendment in 1960 vide Amending Act No. 16 of 1960. As per Section 16 of that Amending Act the words "and except on payment of such amount as the State Government may by general or special order determine" came to be inserted by that Amending Act in 1960. Hence from 1960 the question of payment of the amount fixed by the State Government was required to be considered. Admittedly, in this case, the sale transaction took place prior to 1960. Vikrambhai Lalsinh sold out the land to Kuberbhai, Vithalbhai and Raijibhai on 30.3.1957. When that is so Section 43 that came into being owing to amendment in 1960 was not applicable to the sale of the land and so it has been rightly made it clear in permission dated 6.2.1976 vide Section 63 of the Bombay Tenancy Act that the amount of premium was not to be levied. In view of such law the Tribunal rightly affirmed that Section 43 was not applicable and the land being old tenure land, there was no reason to levy the amount of premium. However, the Tribunal is not right in partly confirming the untenable order of the Collector.

6. Tribunal is of the view that it is open to the State Government to direct a party to make the payment under Section 73-B of the Bomaby Land Revenue Code. In my view, the Tribunal is not at all right in invoking that provision. As per that provision the payment of premium can be ordered where any occupancy by virtue of any conditions annexed to the tenure by or under the Code is not transferable or partible without the previous sanction of the State Government. The land being the old tenure land was transferable and partible under Bombay Tenancy Act without any premium. Under the Bombay Land Revenue Code for N.A. use permission under Section 65 is necessary which is already obtained. No where such land is made not transferable or partible without previous sanction of the State Government. Hence Section 73B of the Bombay Land Revenue Code is not applicable. The Tribunal has fallen into the error in invoking that Section, and anyhow on rickety reasons justifying the levy of premium.

7. The State is, no doubt, sovereign; but on the ground of sovereignty it cannot act or order in the way it likes. The State can exercise the powers flowing from the Constitution or from the laws in force. If there is no provision empowering the State to levy premium or tax or charges or fees or penalty or duty, it cannot under the guise of sovereignty arbitrarily levy the same. Such cardinal principal of Rule of Law has been lost the sight of the Tribunal and it fell into error in holding that the State being sovereign could levy the premium, if not under Section 43 of the Bombay Tenancy Act.

8. For the aforesaid reasons, the order of the Collector is not legal and valid and cannot be maintained. Likewise the order of the Tribunal partly confirming the order of the Collector is also neither legal nor valid and cannot be maintained. In the result, the petition succeeds. The order of the Tribunal dated 1.1.1986 passed in Ten B.A. No. 754 of 1983 confirming the order of the Collector dated 20.3.1983 at Annexure E to the petition directing the petitioner to pay Rs. 2,66,312.50ps. as the amount of premium and the order of the Collector dated 20.3.1983 in that regard are quashed and set aside. No costs in the circumstances of the case. Rule is made absolute to the aforesaid extent.

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